

REMARKS / ARGUMENTS

This amendment is in response to the Office Action of August 18, 2003, in the above identified application, which application is directed to a dispenser of volatile materials, said dispenser being a combination of elements comprising a heat conductive base, a solid fuel in which said volatile materials are encompassed, and a consumable wick at which said fuel may be burned. The heat conductive base is configured so as to both conduct heat to the fuel to melt the fuel, and to cause the flow of melted fuel to the wick. In addition, the base comprises heat conductive elements to conduct heat to the base from the flame upon the wick. The volatile materials are indicated as being active materials such as fragrances, air fresheners, deodorizers, and the like. A Request for Extension of Time, extending the period for response until February 18, 2004, and the appropriate fee, is included herewith.

By the present amendment, applicant has canceled claims 1 - 7, 12, 17 - 20, and 23, and amended claims 8, 10, 11, and 21 so as to more specifically point out the novelty of the present invention. In independent claim 8, applicant has amended the recitation of the presence of the heat conductive elements so as to more clearly indicate their position and function. In claim 10, applicant has more specifically recited that such heat conductive element comprises a lobe, which recitation has now been removed from claim 11 (which is dependent from claim 10). Claim 21 has been amended to more clearly indicate that the container for the fuel element comprises a heat conductive lobe which conducts heat to said fuel and to said container, and that the solid fuel element is engaged by and melted by both said container and said lobe. Claims 13 - 16, having been allowed by the Examiner, have not been amended. Claims 9 and 22, which are dependent from claims amended herein, have not been amended.

In the Office Action, the Examiner has rejected claims 1-12 and 17-23 of the application, and indicated the allowance of claims 13-16. It is submitted that the remaining claims are patentably distinct over the prior art, and allowance of all remaining claims is solicited. In light of the cancellation of claims 1 - 7, 12, and 17 - 20, the rejections thereof are considered moot, and shall not be discussed at length hereafter.

With respect to the claims which remain in this application, the Examiner has rejected claims 8-12 as unpatentable over Schimeker in view of Hammons *et al.* and

either Moore or Zaunbrecher *et al.* under 35 USC 103(a), claim 21 as unpatentable over Schimeker under 35 USC 102(b), and claim 22 as unpatentable over Schimeker under 35 USC 103(a). Applicant submits that these remaining claims of this application, either as originally presented, or as presently amended, are clearly patentable over the references cited, and offer the following comments relative to said references.

Schimeker, WO 96/02794, relates to a paraffin lamp, but specifically to a lamp comprising a non-consumable wick (3), held in an upright body (4) which surrounds a cylindrical non-combustible sheath (5) permeable to meltable fuel. The upright body (4) is metal, surrounds the wick, and is heated by the flame upon the wick to ensure rapid heating of the fuel with which it is in contact. There is no teaching of a heat conductive lobe being part of a heat conductive surface upon which the fuel rests, with said lobe and surface engaging and conducting heat to the fuel. Thus, there are several important distinctions to be noted relative to the present invention. First, the present invention specifically claims a consumable wick, as opposed to the non-consumable wick of the reference. A consumable wick is specified in this application at Page 8, Line 16; Page 9, Line 20; Page 9, Line 26; Page 12, Line 6; Page 13, Line 14; and at numerous other locations. Secondly, the heat conductive body of the present invention comprises a simmer plate with a heat conductive element on the surface thereof, upon which surface the fuel rests, rather than an upright body surrounding a non-consumable wick. Clearly, a much larger area of contact (and heat exchange) exists between the heated simmer plate and lobe of the present invention and the fuel resting thereupon than exists between the upright body of Schimeker and the fuel with which it is in contact. Further, the claims of the present application recite the presence of a lobe on the supporting surface to conduct heat to both said surface and to the fuel. Accordingly, it is submitted that claims 21 and 22, which are rejected on the basis of Schimeker alone, are neither taught nor made obvious by the Schimeker reference. Moreover, it is submitted that the secondary references applied in the rejection of claims 8 - 12 fail to overcome the failings of the Schimeker reference, and that said claims 8 - 12 are similarly allowable.

With respect to the secondary references, applicant offers the following comments. The Examiner, as indicated, has rejected claims 8 - 12 as unpatentable under 35 USC 103(a) over Schimeker in view of Hemmons *et al.* and either Moore or Zaunbrecher *et al.* As previously discussed, the Schimeker reference fails to teach the

presence of a consumable wick, or a separate heating element (lobe) in the container for the fuel. It is noted that the Examiner acknowledges at page 5, line 3 of the Office Action, that the wick of Schimeker is non-consumable, and that the fuel element is not disclosed to contain a volatile active material. The Examiner indicates that Hammons *et al.* teach the use of both consumable and non-consumable wicks, and that the substitution of one for the other would be obvious to one skilled in the art. It is to be noted however, that the wick of Hammons *et al.* is utilized in an oil lamp, having different requirements than either the candle of Schimeker or the dispenser of applicant. In fact, the teachings of Hammons *et al.* would not lead one of ordinary skill in the art to select a consumable wick as opposed to a non-consumable wick for use in the device of Schimeker. Attention is directed to column 4, lines 63 - 67 of the reference, wherein it is indicated that "Preferably, the wick is formed of a material which is only slowly consumed when ignited and used in the delivery devices according to the present invention, and of these particularly useful are non-woven glass fiber, asbestos, glass filled polymer fibers, cotton, linen, silk, ..." As such, the Hammons *et al.* reference is neutral as to the suitability of one type of wick over the other. Further, the Hammons *et al.* patent has no relevance to a device in which fuel is melted by transfer of heat from a flame to a surface, which surface assists in the flow of liquefied fuel to the wick.

The Moore patent relates to the use of chips of wax containing a fragrance, which chips are placed near a candle which does not contain a fragrance, whereby when said candle is burned, the radiant heat from the flame causes the fragrance in said chips to be released. There is no teaching of the transfer of any heat beyond the radiant heat of the flame warming the chips. Accordingly, the relevant teaching of the reference is that fragrances may be contained in a wax chip which may be radiantly heated to release said fragrance. This fails to overcome the deficiencies of the primary (Schimeker) and secondary (Hammons *et al.*) references, which either individually or collectively fail to teach the use of a heat conducting element, such as a lobe, as part of a heat conductive base to conduct heat received from a flame upon a consumable wick to a solid fuel containing a volatile active material, and to both heat and engage said fuel to assure the flow of melted fuel to the wick for continued consumption. The Zaunbrecher *et al.* reference is equally deficient, in that it teaches an air freshener candle composed of wax, a polymer, a particulate polysaccharidic filler, and an air freshener ingredient, which is released to the atmosphere upon burning of the wickless

candle. Thus, while the reference teaches that candlewax may include a volatile active material, it has no further relevance to the present invention.

In the rejections of cancelled claims 17 - 20, the Examiner has relied upon one reference not previously discussed. The Oesterle *et al.* patent teaches a replacement element for a votive candle container. As discussed in the specification of the present application, this replacement element is designed to engage an adapter inserted into the cup for the votive, which adapter supports the wick until the candle has completely burnt out, but does not function to provide a heat transfer means to provide melting of the fuel. The function of the adapter is to provide a proper positioning of the replacement votive element and to provide a wicking material at the bottom of the cup which may be ignited so as to consume all of the wax remaining within the cup after the votive element has been consumed. As such, the Oesterle *et al.* reference is not believed to add anything to the prior art of record, or to overcome the deficiencies of the prior art relied upon relative to the remaining claims of this application.

In light of the amendments and comments above, it is submitted that the rejection of Claims 8-11, 21, and 22, as set forth by the Examiner in the Office Action of August 18, is no longer viable, and that said claims should be indicated as being allowable. Further, in light of the previous indication of the allowability of Claims 13 - 16, it is submitted that all claims of the present application are now in condition for allowance, and an early indication of the allowance of all of said claims is solicited. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
Attorney for Applicants Fumer *et al.*

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Herbert W. Mylius
Quarles & Brady LLP
Registration Number 24,578
For S. C. Johnson & Son, Inc.
1525 Howe Street
Racine, WI. 53403
Telephone: (262) 260-2715